

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Federal-State Joint Board
on Universal Service

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CC Docket 96-45

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COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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**COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Cellular Telecommunications Industry Association ("CTIA")¹ hereby submits its Comments in the above-captioned proceeding.²

INTRODUCTION AND SUMMARY

While the Notice requests comment upon a myriad of important issues, CTIA limits its Comments to two general principles:

- The Commission should implement its universal service program in a competitively neutral manner, i.e., all telecommunications carriers, including CMRS carriers, are required to contribute to the preservation of universal service. Moreover, all CMRS carriers should also be permitted to gain access to the subsidies established by the Commission.
- The federal/state jurisdictional scheme established under Section 254 is subject to the specific mandates of Section 332. That is, the states' authority to regulate CMRS carriers for

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers, including cellular, personal communications services ("PCS"), enhanced specialized mobile radio, and mobile satellite services.

² Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking and Order Establishing Joint Board in CC Docket 96-45, FCC 96-93 (rel. March 8, 1996) ("Notice").

universal service concerns is circumscribed by Section 332.

While the first principle arguably presents no novel or controversial issues, the second requires some explanation. Specifically, state universal service arrangements are limited by Section 332. While the Commission has a role in ensuring that CMRS and other carriers contribute to universal service consistent with Section 254, any plans the states seek to apply to CMRS carriers, must conform with Section 332.

This delineation of the federal versus state roles with respect to CMRS participation in universal service programs is a natural and consistent aspect of the judgments Congress made about CMRS in 1993. It was expressly codified in Section 332(c)(3)(A),³ and is firmly reinforced by the Telecommunications Act of 1996. It simply reflects Congress' legitimate concern that state rate and other regulation not be used to thwart the competitive development of the CMRS market.

I. THE COMMISSION SHOULD ADOPT A COMPETITIVELY-NEUTRAL UNIVERSAL SERVICE PROGRAM.

The 1996 legislation makes clear, as explicated in the Notice, that all telecommunications providers are obligated to "make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service."⁴ For that reason, all telecommunications providers, including CMRS carriers, are obligated to contribute to universal service.

³ 47 U.S.C. § 332(c)(3)(A).

⁴ 47 U.S.C. § 254(b)(4).

Equally important is the need to recognize that CMRS and other telecommunications carriers should be eligible to receive universal service funding for those subsidized telecommunications services, assuming they meet the specifications of Section 214(e)(1), as required.⁵ Such a result is entirely consistent with the Commission's proposal to "ensure that the means of distributing universal service support should be competitively neutral and the least regulatory possible, consistent with . . . statutory obligations."⁶

Moreover, regarding CMRS carriers, the states' discretion to limit their participation in rural areas is circumscribed by Section 253. As the Notice explains, the states generally have discretion under a "public interest" test to determine whether more than one common carrier can be designated as an "eligible carrier" in rural areas.⁷ In other areas, the state must designate as an "eligible carrier" any common carrier meeting the threshold requirements of Section 214(e)(1).⁸

With respect to CMRS carriers requesting designation in rural markets, Section 253(f) specifically prohibits the states' discretion.⁹ Thus, under the 1996 legislation, CMRS carriers

⁵ 47 U.S.C. § 214(e)(1). See Notice at ¶¶ 41-43.

⁶ Notice at ¶ 8 (citation omitted). For example, a fee structure based on subscriber lines would be competitively neutral.

⁷ Notice at ¶ 42.

⁸ Id.

⁹ Section 253(f) provides: "It shall not be a violation of this section for a State to require a telecommunications
3 (continued...)

should be permitted to provide universal service in any market upon request to the state. Such a result is entirely consistent with Section 332(c), considering that states are expressly barred, under that subsection, from restricting CMRS entry.¹⁰

II. THE STATES' AUTHORITY WITH RESPECT TO UNIVERSAL SERVICE IS CIRCUMSCRIBED BY SECTION 332.

While, as stated above, CMRS carriers should be required to contribute to universal service, the means by which they do so on the intrastate level is limited by Section 332's specific proscription against state rate and other regulation.

The concept of universal service, as expressed in general terms by Section 254, and as reflected in the Commission's Notice, is based upon the notion that universal, affordable access to a minimum of telecommunications services carries inherent value which ultimately serves the public interest. Section 254, then, reflects a congressional assessment that, in limited instances, regulatory oversight on both the federal and

⁹(...continued)
carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214(e)(1) for designation as an eligible telecommunications carrier for that area before being permitted to provide such service. This subsection shall not apply . . . (2) to a provider of commercial mobile services."

Arguably, CMRS carriers need not even meet the threshold requirements of Section 214(e)(1) prior to designation as an eligible carrier.

¹⁰ See 47 U.S.C. § 332(c)(3)(A) (" . . . no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service. . . "); see also 47 U.S.C. § 253(e) (Section 332(c) savings clause).

state level is necessary to ensure that the market provides everyone with core communications services.¹¹

Section 332, in turn, reflects Congress' specific concern that universal service not be used as a means to reimpose state regulation upon CMRS carriers. In its considered judgment, Congress determined that the threat to the competitive development of the CMRS market raised by such regulation generally outweighs the state's interest, even its interest in ensuring universal service.

In amending Section 332 in 1993, Congress preempted state rate and entry regulation of CMRS¹² to "foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure."¹³ In other words, Congress,

¹¹ Under Section 254, with regard to the states' authority to adopt universal service regulations, "[a] State may adopt regulations **not inconsistent with the Commission's rules** to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, **in a manner determined by the State** to the preservation and advancement of universal service in that State." 47 U.S.C. § 254(f) (emphasis added).

¹² Specifically, Section 332(c)(3)(A) provides in relevant part: "Notwithstanding sections 152(b) and 221(b), no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service . . . except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services." 47 U.S.C. § 332(c)(3)(A).

¹³ See H.R. Rep. No. 111, 103rd Cong., 1st Sess. 260 (1993). See also H.R. Conf. Rep. No. 213, 103rd Cong., 1st Sess. 490 (1993) (the intent of Section 332(c)(1)(A) "is to establish a Federal regulatory framework to govern the offering of all commercial mobile services"). ("Conference Report").

in recognition of the interstate nature of CMRS, and to ensure its continued competitive development, deliberately reduced the states' oversight and enforcement role.

Specifically, in commenting upon the states' residual authority to regulate CMRS providers for universal service concerns, Congress noted that:

Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates.¹⁴

As the Conference Report clarifies:

the Conferees intend that the Commission should permit States to regulate radio service provided for basic telephone service **if subscribers have no alternative means of obtaining basic telephone service.** If, however, several companies offer radio service **as a means of providing basic telephone service** in competition with each other, such that consumers can choose among alternative providers of this service, **it is not the intention of the conferees that States should be permitted to regulate these competitive services simply because they employ radio as a transmission means.**¹⁵

These passages are meaningful on several counts to the Commission's interpretation of the states' role in administering universal service vis-a-vis CMRS carriers. First, Congress specifically and drastically limited the scope of permissible state regulation of CMRS providers. That is, state retention of rate regulation in those instances where the CMRS carrier was

¹⁴ 47 U.S.C. § 332(c)(3)(A).

¹⁵ Conference Report at 493 (emphasis added).

providing basic telephone service was narrowly circumscribed to protect universal service considerations and nothing more.

Second, even this reservation of state jurisdiction to preserve universal service was severely limited. In fact, Congress only reserved the states' authority to regulate the rates charged by CMRS for basic telephone service if the wireless carrier was the sole local exchange services provider in the relevant geographic market. Importantly, if there were more than one provider of basic telephone service, or if the CMRS carrier was providing a service other than basic telephone service, state regulation of the CMRS provider, even for universal service concerns, was not implicated.¹⁶

For these reasons, the Commission's universal service analysis as applied to CMRS carriers must necessarily factor Congress' explicit universal service directives established by Section 332(c)(3)(A), and more generally, in the 1996 legislation.¹⁷

¹⁶ The only other instance in which a state may regulate CMRS carrier rates is if it demonstrates that the current market fails to adequately protect subscribers "from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory." See 47 U.S.C. § 332(c)(3)(A)(i), (B). To date, no state has been able to successfully meet this burden to either retain current CMRS regulation or to reimpose state regulation.

¹⁷ See 47 U.S.C. § 253(b), (e) (Section 332(c)(3) savings clause); 47 U.S.C. § 254(b)(5) (federal and state universal service mechanisms should be "specific, predictable and sufficient"); see also 1996 Act Senate Conference Report, at 131 ("To the extent possible, the conferees intend that any support mechanisms continued or created under new section 254 should be explicit, rather than implicit as many support mechanisms are today.").

This result is entirely consistent with the Commission's obligation to adopt an "equitable and non-discriminatory" and a "specific, predictable and sufficient" contribution mechanism.¹⁸ In other words, CMRS carriers are required to contribute to universal service. But, state administration of universal service with respect to CMRS carriers is subject to Section 332.

¹⁸ See 47 U.S.C. § 254(b)(4), (5).

CONCLUSION

For these reasons, CTIA respectfully requests that the Commission adopt a competitively-neutral universal service program, which (1) ensures the eligibility of all participating telecommunications carriers, including CMRS carriers, to receive universal service support funding; and (2) appropriately limits state requirements directed toward the CMRS industry.

Respectfully submitted,

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